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Filing date: **01/21/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Volac International Limited		
Entity	Corporation	Citizenship	United Kingdom
Address	50 Fisher's Lane, Orwell Royston, Hertfordshire, SG8 5QX UNITED KINGDOM		

Attorney information	Ian D. Gates DASCENZO Intellectual Property Law, P.C. 1000 S.W. Broadway, Suite 1555 Portland, OR 97205 UNITED STATES robin@dascenzoiplaw.com,ian@dascenzoiplaw.com Phone:(503) 224-7529
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Registration Subject to Cancellation

Registration No	3854744	Registration date	09/28/2010
Registrant	DAIRY FARMERS OF AMERICA, INC. 10220 N. Ambassador Drive Kansas City, MO 64153 UNITED STATES		

Goods/Services Subject to Cancellation

Class 029. First Use: 2009/11/26 First Use In Commerce: 2009/11/26 All goods and services in the class are cancelled, namely: dairy-based energy beverages

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Petition_for_Cancellation_NMT425CAN_1-21-15.pdf(188850 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Ian D. Gates/
Name	Ian D. Gates
Date	01/21/2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

VOLAC INTERNATIONAL LIMITED)
)
) Petitioner,)
)
) v.)
)
) DAIRY FARMERS OF AMERICA, INC.,)
)
) Registrant.)
_____)

Cancellation No. _____
Registration No. 3,854,744

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, Virginia 22313-1451

PETITION FOR CANCELLATION

Petitioner, Volac International Limited (“Petitioner”), a corporation organized and existing under the laws of the United Kingdom, having a place of business at 50 Fisher’s Lane, Orwell, Royston, Hertfordshire SG8 5QX, United Kingdom, believes that it will be damaged by the continued registration of U.S. Trademark Registration No. 3,854,744, and hereby petitions to cancel said registration under the provisions of Section 14 of the Trademark Act of 1946, 15 U.S.C. § 1064.

The grounds for cancellation are:

1. Petitioner is a developer, manufacturer, and seller of dairy products.

2. On information and belief, Registrant Dairy Farmers of America, Inc. (“Registrant”) is a corporation doing business in Missouri with a business address of 10220 N. Ambassador Drive, Kansas City, Missouri 64153.

3. Petitioner is the owner of pending intent-to-use U.S. Trademark Application Serial No. 86/505,677, for the mark UPBEAT for concentrated protein drinks for medicinal and health care purposes; food dietary and nutritional products including whey or milk protein; concentrated protein foods and drinks for fitness and personal care purposes in International Class 5; dairy products; powdered milk protein, whey powder, lactose products; dairy beverages; beverages containing milk protein; milk products; snack foods; protein preparations for use in foodstuffs in liquid, solid or solution forms; foodstuffs containing whey powder or powdered milk protein; protein powder in International Class 29; and fruit drinks; whey beverages in International Class 32.

4. Upon information and belief, Registrant is the owner of U.S. Registration No. 3,854,744 (the “Registration”), which issued on September 28, 2010 for the mark UPBEAT! for dairy-based energy beverages in Class 29. To the best of Volac’s knowledge, Registrant has not assigned ownership of the Registration to any other party.

5. According to the Registration, Registrant claims that it began offering dairy-based energy beverages under the mark UPBEAT! at least as early as November 26, 2009.

6. Upon information and belief, Registrant is not currently offering dairy-based energy beverages under the UPBEAT! mark.

7. Upon information and belief, Registrant has not offered or sold dairy-based energy beverages under the UPBEAT! mark since at least 2010 and has no intent to resume use of the UPBEAT! mark for dairy-based energy beverages.

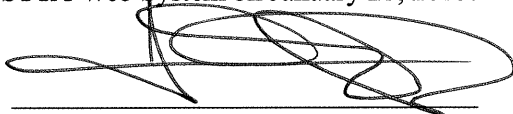
8. Upon information and belief, Registrant has abandoned any rights it had in the UPBEAT! mark through non-use and through a course of conduct that caused the mark to lose any distinctiveness it ever had as an indication of the origin of Registrant's goods.

9. In view of the above, Petitioner alleges that Registrant has abandoned the UPBEAT! mark, Petitioner will be damaged by continued existence of Registration No. 3,854,744, and, therefore, the Registration should be cancelled.

WHEREFORE, Petitioner respectfully requests that Registration No. 3,854,744 be cancelled pursuant to 15 U.S.C. § 1064(3) because the UPBEAT! mark has been abandoned by Registrant.

CERTIFICATE OF E-FILING

I hereby certify that this correspondence is being transmitted electronically via the United States Patent and Trademark Office's ESTTA-Web System on January 21, 2015.



Ian D. Gates

Respectfully submitted,

DASCENZO INTELLECTUAL
PROPERTY LAW, P.C.



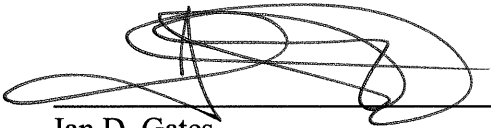
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Petition for Cancellation is being served on Registrant Dairy Farmers of America, Inc. by mailing said copy on January 21, 2015 via U.S. First Class Mail, postage prepaid, and addressed to Registrant as follows:

Dairy Farmers of America, Inc.
10220 N. Ambassador Drive
Kansas City, Missouri 64153

Dated: January 21, 2015



Ian D. Gates
Of Attorneys for Petitioner